

ARBITRATION OF CLAIMS

Convention signed at Washington December 5, 1885, reviving and modifying convention of April 25, 1866

Senate advice and consent to ratification, with amendments, April 15, 1886

Ratified by Venezuela August 2, 1888

Ratified by the President of the United States August 7, 1888

Ratifications exchanged at Washington June 3, 1889

Entered into force June 3, 1889

Proclaimed by the President of the United States June 4, 1889

Supplemented by conventions of March 15, 1888,¹ and October 5, 1888²

Terminated upon fulfillment of its terms³

28 Stat. 1053; Treaty Series 371

CONVENTION FOR A RE-OPENING OF THE CLAIMS OF CITIZENS OF THE UNITED STATES AGAINST VENEZUELA UNDER THE TREATY OF APRIL 25, 1866

The President of the United States of America having on the 3d. day of March 1883, approved the following Joint Resolution of Congress: (Public Resolution—No 26.)

“Joint Resolution providing for a new Mixed Commission in accordance with the treaty of April twenty-fifth, eighteen hundred and sixty-six,⁴ with the United States of Venezuela.

“Whereas since the dissolution of the mixed Commission appointed under the treaty of April twenty fifth, eighteen hundred and sixty-six, with the United States of Venezuela, serious charges, impeaching the validity and integrity of its proceedings, have been made by the Government of the United States of Venezuela, and also charges of a like character by divers citizens of the United States of America, who presented claims for adjudication before that tribunal; and

¹ TS 371, *post*, p. 1093.

² TS 371, *post*, p. 1095.

³ The Commission met at Washington Sept. 3, 1889, and adjourned Sept. 2, 1890, awarding claims totaling \$980,572.60 to the United States (II Malloy 1867).

⁴ TS 370, *ante*, p. 1082.

"Whereas, the evidence to be found in the record of the proceedings of said commission, and in the testimony taken before committees of the House of Representatives in the matter, tends to show that such charges are not without foundation; and

"Whereas it is desirable that the matter be finally disposed of in a manner that shall satisfy any just complaints against the validity and integrity of the first Commission, and provide a tribunal under said treaty constructed and conducted so as not to give cause for just suspicion; and

"Whereas, all evidence before said late Commission was presented in writing and is now in the archives of the State Department; and,

"Whereas the President of the United States has, in a recent communication to Congress, solicited its advisory actions in this matter:

"Therefore

"Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is, requested to open diplomatic correspondence with the Government of the United States of Venezuela, with a view to the revival of the general stipulations of the treaty of April 25th 1866, with said government, and the appointment thereunder of a new Commission, to sit in the city of Washington, which Commission shall be authorized to consider all the evidence presented before the former Commission in respect to claims brought before it, together with such other and further evidence as the claimants, may offer; and from the awards that may be made to claimants, any moneys heretofore paid by the Department of State, upon certificates issued to them, respectively, upon awards made by the former Commission, shall be deducted, and such certificates deemed cancelled; and the moneys now in the Department of State received from the Government of Venezuela on account of said awards, and all moneys that may hereafter be paid under said treaty, shall be distributed pro rata in payment of such awards as may be made by the Commission to be appointed in accordance with this resolution."

And the proposal contemplated and authorized by the foregoing joint resolution of Congress having been made by the Government of the United States of America to the Government of the United States of Venezuela, and accepted by the latter through its diplomatic representative in Washington; The Government of the United States of America and the Government of the United States of Venezuela, to the end of effecting by means of a Convention arrangements for the execution of the accord thus reached between the two Governments, have named their Plenipotentiaries to confer and agree thereupon, as follows:

The President of the United States of America, Thomas F. Bayard, Secretary of State of the United States of America; and

The President of the United States of Venezuela, Antonio M. Soteldo, Chargé d'Affaires of Venezuela at Washington;

Who after having communicated to each other their respective full powers found in good and due form, having agreed upon the following articles:

ARTICLE I

The general stipulations of the Convention of April 25th, 1866, between the contracting parties are hereby revived with such alterations as are required in conformity with the aforesaid joint resolution of the Congress of the United States, and with such further modifications as are deemed necessary for the certain and speedy accomplishment of the ends in view, and for the reciprocal protection of the interests of the high contracting parties as hereinafter provided.

ARTICLE II

All claims on the part of corporations, companies, or individuals, Citizens of the United States, upon the Government of Venezuela, which may have been presented to their Government or to its legation at Caracas, before the first day of August, 1868, and which by the terms of the aforesaid Convention of April 25th, 1866, were proper to be presented to the Mixed Commission organized under said convention shall be submitted to a new Commission, consisting of three Commissioners one of whom shall be appointed by the President of the United States of America, one by the Government of the United States of Venezuela and the third shall be chosen by these two Commissioners; if they cannot agree within ten days from the time of their first meeting as hereinafter provided, then the diplomatic representative of either Russia or Switzerland at this capital shall be requested by the Secretary of State and the Venezuelan Minister at Washington to name the third Commissioner.

In case of the death, resignation or incapacity of any of the Commissioners, or in the event of any of them omitting or ceasing to act, the vacancy shall be filled within three months by naming another Commissioner in like manner as herein provided for the original appointment.

ARTICLE III

The Commissioners so appointed shall meet in the city of Washington at the earliest convenient time within three months from the exchange of the ratifications of this Convention, and shall, as their first act in so meeting, make and subscribe a solemn declaration that they will carefully examine and impartially decide, according to justice and in compliance with the provisions of this Convention, all claims submitted to them in conformity herewith, and such declaration shall be entered on the record of their proceedings.

ARTICLE IV

The concurring judgment of any two Commissioners shall be adequate for every intermediate decision arising in the execution of their duty, and for every final decision or award.

ARTICLE V

So soon as the Commission shall have organized, notice shall be given to the respective Governments of the date of organization and of readiness to proceed to the transaction of the business of the Commission.

The Commissioners shall thereupon proceed without delay to hear and examine all the claims which by the terms of the aforesaid Convention of April 25, 1866, were proper to be presented to the Mixed Commission organized under the Convention of April 25, 1866; and they shall to that end consider all the evidence admissible under the aforesaid Convention of April 25, 1866, in respect to claims adjudicable thereunder, together with such other and further evidence as the claimants may offer through their respective Governments, and such further evidence as may be offered to rebut any such new evidence offered on the part of the claimant, and they shall, if required, hear one person on behalf of each Government on every separate claim.

All the papers and evidence before the said former Commission, now on file in the archives of the Department of State at Washington, shall be laid before the Commission; and each Government shall furnish, at the request of the Commissioners, or of any two of them, all such papers and documents in its possession as may be deemed important to the just determination of any claim.

ARTICLE VI

The Commissioners shall make such decision as they shall deem, in reference to such claims, conformable to justice.

The concurring decisions of the three Commissioners, or of any two of them, shall be conclusive and final. Said decisions shall in every case be given upon each individual claim, in writing, stating in the event of a pecuniary reward being made, the amount or equivalent value of the same, expressed in gold coin of the United States of America; and in the event of interest being allowed for any cause and embraced in such award, the rate thereof and the period for which it is to be computed shall be fixed, which period shall not extend beyond the close of the Commission; and said decision shall be signed by the Commissioners concurring therein.

In all cases where the Commissioners award an indemnity as aforesaid, they shall issue one certificate of the sum to be paid to each claimant, respectively, by virtue of their decisions, inclusive of interest when allowed, and after having deducted from the sum so found due to any claimant or claim-

ants any moneys heretofore paid by the Department of State at Washington upon certificates issued to such claimants, respectively, upon awards made by the former Mixed Commission under the Convention of April 25th, 1866. And all certificates of awards issued by the said former Mixed Commission shall be deemed canceled from the date of the decision of the present Commission in the case in which they were issued.

The aggregate amount of all sums awarded by the present Commission, and of all sums accruing therefrom, shall be paid to the United States. Payment of said aggregate amount shall be made in equal annual payments to be completed within ten years from the date of the termination of the labors of the present Commission. Semi-annual interest shall be paid on the aggregate amount awarded, at the rate of five per cent per annum from the date of the termination of the labors of the Commission.

ARTICLE VII

The moneys now in the Department of State actually received from the Government of Venezuela on account of the awards of the said former Mixed Commission under the convention of April 25, 1866, and all moneys that may hereafter be paid on said former account by the Government of Venezuela to the Government of the United States, shall be credited to the Government of Venezuela in computing the aggregate total which may be found due to the Government of the United States under the stipulations of the preceding article, and the balance only shall be considered as due and payable with interest in ten annual payments as aforesaid. *Provided however*, that in the event of the aggregate amount which the present Commission may find due to the Government of the United States being less than the aggregate of the sums actually received from the Government of Venezuela, and remaining undistributed in the Department of State, at Washington, the Government of the United States will refund such excess to the Government of Venezuela within six months from the conclusion of the labors of the Commission.

The payment of moneys due from the Government of Venezuela to the Government of the United States under the former Convention of April 25, 1866, shall be deemed to have ceased from the first day of April 1883, to be resumed should occasion arise as hereinbefore provided.

ARTICLE VIII

In the event of the annulment of any awards made by the former Mixed Commission under the Convention of April 25, 1866, the Government of the United States is not to be regarded as responsible to that of Venezuela for any sums which may have been paid by the latter Government on account of said awards, so far as said sums may have been distributed. In like manner, if the awards made by the present Commission and the certificates issued by it shall in any cases be found less than the amount heretofore paid to the

claimants from the moneys received from Venezuela, the Government of the United States shall not be regarded as responsible by reason thereof to the Government of Venezuela.

The rehearing provided in the present convention affects, as against the Government of the United States, only the installments of moneys paid to and now held by the United States, and those hereafter to be paid; and the effect of such annulment or reduction in any case shall be to discharge the Government of Venezuela, wholly and forever, from any obligation to pay further installments in such case, except as provided in the present convention.

ARTICLE IX ⁵

It is further agreed that if the commission, hereunder organized shall in whole or part annul any money awards made in any cases by the former Mixed Commission under the Convention of April 25, 1866, it shall be the duty of the Commission to examine and decide whether, under all the circumstances, and with due regard to principles of justice and equity there are any third parties who have, with the observance of due care and diligence, become possessed, prior to the date of the exchange of ratifications hereof, for a just and valuable consideration, of any portion of the certificates of award heretofore issued in said claims, and whether, under the constitution or laws of either of the contracting parties, said third parties have acquired vested rights, by virtue of the awards of the former Commission under the Convention of 1866, imposing the duty on the Government of the United States to collect from Venezuela the amount or proportion of said certificates of awards which may be held and owned by third parties.

If the present Commission shall decide that there are third parties who are possessed of vested rights, then it shall examine and ascertain the sum paid by each and all of said third parties for their respective interests or shares in said awards, and shall fix the amount of their said interest in said certificates of award for the sums so adjudged due, which shall be paid by Venezuela to the United States in the manner hereinbefore stipulated, the same as all other certificates issued by the present Commission.

ARTICLE X

Upon the conclusion of the labors of the Commission organized in virtue of this present Convention, the Department of State of the United States of America shall distribute pro rata among the holders of the certificates which may be issued under the present convention, the moneys in the Department of State actually received from the Government of Venezuela on account of the awards of the former Mixed Commission under the Convention of

⁵ For an understanding relating to art. IX, see agreement of Mar. 15, 1888 (TS 371), *post*, p. 1094.

April 25, 1866; and all moneys that may hereafter be paid to the United States under this present convention shall be in like manner distributed pro rata in payment of such awards as may be made under this present convention.

ARTICLE XI

The decisions of the Commission organized under this present convention shall be final and conclusive as to all claims presented or proper to be presented to the former Mixed Commission.

ARTICLE XII

The Commission appointed under this present convention shall terminate its labors within twelve months from the date of its organization. A record of the proceedings of the Commission shall be kept, and the Commissioners may appoint a Secretary.

ARTICLE XIII

Notwithstanding that the present Commission is organized in consequence of representations made by the Government of Venezuela and that it deals solely with the claims of citizens of the United States, (for which reasons the United States might properly claim that all the expenses hereunder should be borne by Venezuela alone) it is agreed that, in continuation of the arrangement made in the former convention of 1866, the expenses shall be shared as follows: Each Government shall pay its own Commissioner and shall pay one-half of what may be due to the third Commissioner and the Secretary, and one-half of the incidental expenses of the Commission.

ARTICLE XIV

Except so far as revived, continued, modified and replaced by the terms and effects of this present convention, the effects of the former convention of April 25, 1866, shall absolutely cease and determine from and after the date of the exchange of ratifications of this present convention, and the high contracting parties hereby agree that the responsibilities and obligations arising under said former Convention shall be deemed wholly discharged and annulled by the substitution therefor of the responsibilities contracted and obligations created under this present convention, to which the high contracting parties mutually bind themselves to give full, perfect and final effect, without any evasion, reservation or delay whatever.

ARTICLE XV

The present convention shall be ratified by the President of the United States by and with the advice and consent of the Senate of the United States

of America; and by the President of the United States of Venezuela by and with the advice and consent of the Senate of the United States of Venezuela, and the ratifications shall be exchanged at Washington within twelve months from the date of this present convention,⁶ and the publication of the exchange of ratifications shall be notice to all persons interested.

In testimony whereof the respective plenipotentiaries have hereunto affixed their signatures and seals.

Done in duplicate, in the English and Spanish languages, at the city of Washington, this 5th day of December 1885.

T. F. BAYARD [SEAL]

A. M. SOTELDO [SEAL]

⁶ For extensions of the period for exchange of ratifications, see agreements of Mar. 15, 1888 (TS 371), *post*, p. 1093, and Oct. 5, 1888 (TS 371), *post*, p. 1095.